BEFORE IN THE JUDICATER HIGH COURT OF CHATEES,GARH AT

BELASPUR

W.P.No. 1872 /2001

APPLICANT: MUDRIKA PRASAD MISHRA SON OF SHRI AWADH SHARAN MISHRA aged about 35 years, occupation se Termiaatd resident of Science College Q.No. 29 Tahsil & Distt. Raipur Chatees,Garh.

VERSUS

NON-APPLICANTS:

1. State of Chatees Garh through the Secretary education Department Chateesgarh
2. Principle secretary Govt. of Chatees garh.
3. The Director of Higher education Raipur Chatees Garh.
4. The Principle Govt. Science College Raipur Chatees Garh.

P.R. No. 166 of 07
Presented by Shri ... on 23.8.07
dated

WRIT PETION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA

AFR

21.3.06

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1872 of 2001

Petitioner : Mudrika Prasad Mishra

Versus

Respondents : State of Chhattisgath & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Sameer Behar, counsel for the Petitioner.

Shri Pankaj Shrivastava, Panel lawyer for the respondents/State.

ORAL ORDER

(21st March, 2006)

1. The present petition impugns the order of termination dated 28.2.2000 (Annexure A/9), whereby the service of the petitioner has been terminated on the ground that his service was no longer required.

2. The indisputably facts, relevant in the case, are that the petitioner was initially appointed as daily wages worker to look after cycle-stand by order dated 31.3.1986 (Annexure A/1) for a period of three months on temporary basis. Thereafter by order dated 5.8.1986 (Annexure A/2), the petitioner was assigned the work of bell boy. Vide order dated 11.11.1989 (Annexure A/3), the petitioner was appointed as night chowkidar. The petitioner was further assigned the work in the office of the Additional Director by order dated 2.12.1989 (Annexure A/4). Subsequently, the

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petitioner was appointed on daily wages basis for a period of 89 days by order dated 18.4.1990 (Annexure A/5).

3. The respondent No. 4 regularized the services of the petitioner on the post of Chowkidar by order dated 30.3.1993 (Annexure A/7) at a pay scale of Rs. 750-12-870-15-945/-.

4. The services of the petitioner was terminated by order dated 28.2.2000 (Annexure A/9) after a period of 9 years and 5 months as no longer required. Before termination order was passed and given effect to, the petitioner was given one month's advance notice and payment of Rs. 16223/- as retrenchment compensation. The impugned termination order dated 28.2.2000, it appears was passed under provisions of Section 25-F of the Industrial Disputes Act, 1947. Admittedly, it was not the case of even the respondents that the Government Science College, Raipur is an industry.

5. Shri Sameer Behar, learned counsel appearing for the petitioner submits that the service of the petitioner, who was appointed on regular basis, cannot be terminated on the ground that his service was no longer required. Even otherwise, the service of the petitioner would not have been terminated without proper show cause notice and enquiry, if any misconduct was alleged against the petitioner.

6. Shri Pankaj Shrivastava, learned counsel appearing for the respondents submits that the appointment of the petitioner on regular basis by order dated 30.3.1993 was illegal. The circular dated 15.12.1992 clearly provides that the daily

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wages employees and casual employees, who have been appointed prior to 31.12.1988 needs to be regularized but in the present case, the petitioner was appointed on 1.4.1990 vide order dated 18.4.1990 (Annexure A/5) and as such no notice was required before passing the impugned termination order.

7. I have heard learned counsel for the parties and perused the records appended to the petition as well as the return.

8. It is clear that the impugned termination order was not passed on the ground that the appointment of the petitioner on regular basis vide order dated 30.3.1993 was not in accordance with the circular dated 15.12.1992. The impugned termination order, which was passed after a period of 7 years from the date of regularization states that the service of the petitioner was no longer required. The contents of the termination order clearly indicates that the order was passed under the provisions of the Industrial Disputes Act, 1947 in terms of Section 25-F of I.D. Act, which provides for payment of retrenchment compensation in case of retrenchment of a worker employed in an industry. Admittedly, the respondents that the Government Science College, Raipur is not an industry.

9. Learned counsel appearing for the respondents is not in position to explain as to why the provisions of the Industrial Disputes Act, 1947 was made applicable for terminating the service of the petitioner and as such the impugned order is not sustainable. Even if, it is presumed that the appointment

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of the petitioner on regular basis by order dated 18.4.1990 was not in accordance with the circular dated 15.12.1992, the petitioner was entitled to proper show cause notice before an order prejudicial to the interest of the petitioner terminating his services, was passed.

10. I have gone through the circular dated 15.12.1992, which provides that daily wages employees and casual employees appointed prior to 31.12.1888 be considered for regularization. This circular dated 15.12.1992 has been properly understood and applied in the case of the petitioner. The petitioner was initially appointed on 30.3.1986 on daily wages basis to work as worker and thereafter the petitioner continued to work till his service was regularized by order dated 30.3.1993.

11. Submission of learned counsel for the respondents that the appointment on regular basis was not in accordance with the circular dated 15.12.1992 is factually incorrect and deserves to be rejected.

12. On the question of back wages, learned counsel for the petitioner submits that the petitioner was restrained by the respondents from working as chowkidar. The impugned termination order was passed illegally and as such the petitioner was entitled to full back wages. The petitioner was not gainfully employed anywhere during this period. Learned counsel for the respondents in his response submits that on the basis of the principle of "No work no pay", the petitioner should not be granted any back wages.

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13. The petitioner has specifically stated that he was not gainfully employed elsewhere. Having considered facts and circumstances of the case and submissions made by learned counsel for the parties, I am of the view that 50% back wages would subserve the interest of justice.

14. Accordingly, the petition is allowed. The respondents are directed to reinstate the petitioner to his service with immediate effect. The petitioner is entitled to 50% back wages from 28.2.2000 till the date of reinstatement. The retrenchment compensation to the tune of Rs. 16223/-, if the same has been received by the petitioner, be adjusted in the amount of back wages. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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